IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3166 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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B M SOLANKI

Versus

G S R T C

Appearance:

1. Special Civil Application No. 3166 of 1988

MR SV RAJU for Petitioner No. 1

MR HARDIK C RAWAL for Respondent No. 1

MR SN SHELAT for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr.Vijay Bahadursinh for Mr.S.V. Raju for the petitioner and Mr. H.C. Raval for

the respondents. The petitioner has prayed to direct the respondent corporation to permit the petitioner to appear at the examination for promotion to the post of Art-A Electrician to be held on 26th June, 1988 and to consider the case of the petitioner for promotion to the post of Artisan A Electrician and to direct the respondent to promote the respondent to the post of Art.A Electrician with effect from the date on which the respondent No.3 has been promoted and to give other incidental and consequential benefits. In view of the said prayer made by the petitioner, the petitioner was permitted by this court to appear at Art.A Examination by order dated 24th June, 1988 and the petitioner had accordingly appeared at the said examination and respondent has declared result of the said examination but the result of the petitioner has not been declared by the corporation as per order dated 21.9.1988 passed by the Divisional Controller, ST, Palanpur. The grievance of the petitioner is that he is working in the post of Art.C Electrician on permanent basis and, therefore, he is entitled to appear in the examination of Art.A Electrician which is the next promotional post. It is his case that the respondent No.3 is junior to him who has been allowed to appear at the said examination and has been subsequently promoted and thus the respondents have acted in violation of Article 14 and 16 of the Constitution of India. It is also his case that he is working in Art.C Electrician since about eight years and, therefore, he is entitled to appear at Art.A Electrician Examination.

In reply to the present petition filed by the corporation, it has been submitted that the petitioner was temporarily promoted to the post of Artisan - C Electrician and it has been denied that he has been confirmed as such. It has been submitted that the respondent No.3 was appointed pursuant to the advertisement dated 3rd December,1980 and after undergoing the selection procedure, his name was sponsored by the selection committee and he was appointed by way of direct recruitment. It has, therefore, been denied that the respondent No.3 is the person junior to the petitioner. It has also been denied that he is confirmed employee on the post of Art.C Electrician and, therefore, question of considering him senior to respondent No.3 is not arising. Respondent Corporation has relied upon the General Standing Order (GSO) No. 116 and has submitted that the applicant who is eligible for appearing at the Departmental Examination as stated in (1) must have completed one year's continuous service as regular incumbent in the eligible category and has submitted that the petitioner is not a regular incumbent

and, therefore, the petitioner cannot be permitted to appear at the examination in question.

I have considered the submissions made by both the learned advocates. By order dated 9th July, 1980 (ANnexure A page 8), the petitioner has been promoted on temporary and ad.hoc basis in the category of Art.C Mechanic with effect from 30.6.1980 till further orders are made by the authority. Annexure - D is the document which is the list of the persons who were permitted to appear at the Art.A Examination wherein the name of the petitioner is not appearing. The department has not permitted him to appear at the said examination. The respondent corporation has relied upon GSO 116 and has placed the same on record. As against that, the petitioner has not produced on record any order to show that he has been regularly appointed on the post of Art.C. The respondent corporation has come with a case that the respondent No.3 was appointed by way of direct recruitment on the post of Art.C and he has completed one year of service as such on the said post. In view of this, the petitioner was required to demonstrate before this Court that the person like the petitioner has been permitted to appear at the examination in question and was also required to prove that he is a confirmed employee by controverting the averments made in the reply filed by the Corporation. Thus, from the facts on record, it does not appear that the person similarly situated has been permitted to appear at the examination in question. Thus, the petitioner has failed to prove that the corporation has discriminated between equal in equal circumstances. Since the respondent No.3 has been appointed by way of direct recruitment, the petitioner cannot compare him with respondent No.3. Therefore, considering these factual aspects of the matter, according to my opinion, the petitioner has not established his case and he is therefore not entitled for the reliefs prayed for in this petition. Thus, there is no substance in this petition and the same is, therefore, dismissed. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

26.3.2002. (H.K. Rathod,J.)

Vyas